



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,835	03/21/2001	Darren R. Kerr	202890US-25	2952
5073	7590	12/22/2006	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980.			SWEARINGEN, JEFFREY R	
			ART UNIT	PAPER NUMBER
			2145	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/22/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	09/812,835	KERR ET AL.
	Examiner	Art Unit
	Jeffrey R. Swearingen	2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 November 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6 and 8-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6 and 8-18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/28/06 have been fully considered but they are not persuasive.
2. In response to applicant's arguments, the recitation "network routing" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).
3. Applicant should be aware the originally filed claims as presented and as yet to be amended are broad, and read on not only networking art, but also art outside of the networking field. Krause is relevant, analogous networking art in this instance with the application.
4. In response to applicant's argument that Krause is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Applicant claimed a method for routing messages in a network. Krause taught network message routing using routing table information. See Krause, Title. See Krause, Abstract.
5. Applicant cannot rely on limitations in the preamble or specification since the claims are read "in light of the preamble and specification", but said limitations in the preamble and specification are not read into the claims.
6. Applicant argued there was no network routing present in the Krause invention. Applicant's attorney is referred to the title of the Krause patent: "Network Message Routing Using Routing Table Information and Supplemental Enable Information for Deadlock Prevention."
7. Applicant is responsible for the prior art in its entirety, not just the cited sections in the Office Action. The cited sections are for Applicant's assistance, but Applicant should read the entire piece of prior art.

Art Unit: 2145

8. Applicant is reminded that routing messages in a network does not only involve transferring packets between routers, but also routing packets **WITHIN** a router to get to the proper output port. Applicant's claims are broad enough to be read both ways.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-6 and 8-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Krause et al. (US 5,914,953).

11. In regard to claims 1 and 14, Krause disclosed:

identifying a first one message of a first plurality of messages, said first plurality of messages having at least one first routing treatment in common; (column 31, lines 53-67)
recording said first routing treatment, wherein said step of recording comprises building an entry in a flow cache; (AVT table in column 18, lines 42-54)

identifying a second one message of said first plurality of messages; (column 31, lines 53-67)

routing said second one message responsive to said first routing treatment. (column 31, lines 53-67)

12. In regard to claim 2, Krause disclosed:

said first one message comprises a packet; (column 31 line 55)
said first plurality of messages comprises a stream of packets associated with a selected source device and a selected destination device. (column 31, line 38, line 21)

Art Unit: 2145

13. In regard to claim 3, Krause disclosed:

said stream of packets is associated with a first selected port number at said source device and a second selected port number at said destination device. (column 31, line 21-37)

14. In regard to claim 4, Krause disclosed:

said first plurality of messages comprises a message flow. (column 62, lines 28-51)

15. In regard to claim 5, Krause disclosed:

said first plurality of messages comprises an ordered sequence, and said first one message has a selected position in said ordered sequence. (column 62, lines 28-51)

16. In regard to claim 6, Krause disclosed:

said first plurality of messages comprises a stream of messages between a selected pair of transport access points. (column 50, line 37)

17. In regard to claim 8, Krause disclosed:

identifying a message of a second plurality of messages, said second plurality of messages having at least one second routing treatment in common, said second routing treatment differing from said first routing treatment. (column 31, lines 53-67)

18. In regard to claims 9 and 15, Krause disclosed:

access control information for said first one message. (column 31, lines 28-67)

19. In regard to claims 10 and 17, Krause disclosed:

a destination output port for routing said first one message. (column 57, lines 29-41)

20. In regard to claim 11, Krause disclosed:

recording information about said first plurality of messages; (column 51, lines 50-67.

Data must be "recorded" before being transmitted.) and

transmitting said information to at least one selected device on said network. (column 51, lines 50-67)

21. In regard to claims 12 and 18, Krause disclosed:

a transmission time for an initial one message in said plurality of messages;

a transmission time for a most recent one message in said plurality of messages;

Art Unit: 2145

a cumulative count of bytes in said plurality of messages; or

a cumulative count of said one messages in said plurality of messages. (column 51, lines 10-22)

22. In regard to claim 13, Krause disclosed:

receiving said information at said selected device on said network; (column 51, lines 50-67)

recording said information in a database at said selected device; (column 51, lines 50-67)
and

making said information available to a second device on said network. (column 51, lines 50-67)

Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2145

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jason Cardone
Supervisory Patent Examiner
Art Unit 2145